

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
BILLINGS DIVISION

FILED

MAY - 9 2017

Clerk, U.S. District Court
District Of Montana
Billings

UNITED STATES OF AMERICA,

Plaintiff,

vs.

ROBERT P. SCHILLING,

Defendant.

Cause No. CR 15-61-BLG-SPW
CV 17-37-BLG-SPW

ORDER

On March 16, 2017, Defendant Schilling moved the Court to vacate, reduce, and reimpose his sentence. Schilling is a federal prisoner proceeding pro se.

Schilling asks the Court to reduce his sentence to account for time he spent in custody prior to his sentencing date. On March 17, 2017, Schilling was advised that he had not identified a jurisdictional basis that would allow the Court to alter his sentence. He was also advised that his argument could be considered if his motion were recharacterized as a motion under 28 U.S.C. § 2255. Schilling was given an opportunity to amend his motion or withdraw it, *see* Order (Doc. 65) at 1-2; *Castro v. United States*, 540 U.S. 375, 377 (2003). He was also given an extension of time to May 3, 2017, to respond. *See* Order (Doc. 67) at 1.

On April 28, 2017, Schilling moved the Court to appoint new counsel to represent him. He also submitted an "Affidavit of Extension." He continues to

assert that his current sentence should be vacated and reimposed in light of 28 U.S.C. § 994 and 18 U.S.C. §§ 3553 and 3582. *See* Aff. of Extension (Doc. 68-1) at 1-3.

In light of Schilling's new motions, it is not appropriate to recharacterize his motion of March 16, 2017, as a motion to vacate, set aside, or correct the sentence under 28 U.S.C. § 2255. As Schilling was previously advised, once a sentence is imposed, a court's authority to alter it is limited. 18 U.S.C. § 3582(c). The Director of the Bureau of Prisons has not filed a motion to reduce Schilling's sentence. *Id.* § 3582(c)(1)(A). Schilling has not shown that an applicable guideline has been lowered by the Sentencing Commission. *Id.* § 3582(c)(2). The conditions of Fed. R. Crim. P. 35(a) or (b) have not been met. Schilling's motion of March 16, 2017, must be denied for lack of jurisdiction.

As Schilling now suggests, *see* Aff. of Extension at 1, he may petition the Sentencing Commission to reduce his guideline range, *see* 18 U.S.C. § 994(s), but this Court is not involved in that process.

A certificate of appealability, *see* 28 U.S.C. § 2253, is not apposite as the Court has not addressed a motion under 28 U.S.C. § 2255.

Accordingly, IT IS HEREBY ORDERED as follows:

1. Schilling's motion to vacate, reduce, and reimpose his sentence (Doc. 64) is DENIED for lack of jurisdiction.

2. Schilling's motions for the appointment of counsel and for an extension (Docs. 68, 68-1) are DISMISSED AS MOOT.

3. The clerk shall close the civil file by entering a judgment of dismissal and shall provide the address of the United States Sentencing Commission with Schilling's service copy of this Order.

DATED this 9th day of May, 2017.



Susan P. Watters
United States District Court